



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 17 2011

CERTIFIED MAIL 7007 2680 0000 9621 3342
RETURN RECEIPT REQUESTED

Douglas A. Wagner
9990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421


Re: Consent Agreement and Final Order (CA/FO)
Docket No. SDWA-04-2011-1013(b)

Dear Mr. Wagner:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in this matter that has been filed with the Regional Hearing Clerk and served on the parties as required by 40 C.F.R. §22.6. This CA/FO was effective upon the date filed with the Regional Hearing Clerk and you are hereby ordered to comply immediately with the terms of the subject Order.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Carol Chen, Underground Injection Control Enforcement, at (404) 562-9415.

Sincerely,


James D. Giattina
Director
Water Protection Division

Enclosure

cc: Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2011 NOV 17 PM 3: 01
HEARING CLERK

IN THE MATTER OF

Douglas A. Wagner
9990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421

Respondent

Consent Agreement and Final Order

Docket No. SDWA-04-2011-1013(b)

STATUTORY AUTHORITY

1. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice or Part 22), specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999) and the delegated authority of the Administrator of the U.S. Environmental Protection Agency (EPA or Complainant) under Section 1423 of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 1423, the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order ("CA/FO") with Douglas A. Wagner. (Respondent).
2. Section 1450(a)(1) of the SDWA, 42 U.S.C. § 300j-9(a)(1) authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out her functions under the SDWA. These regulations are found at 40 C.F.R. Parts 124, 144, 146, 147, and 148, and set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the SDWA, 42 U.S.C. § 300h, et seq.
3. Injection well owners and operators are required to comply with the UIC program requirements. The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. See 40 C. F. R. § 147.901(a).

ALLEGATIONS

4. Respondent is an individual doing business in the Commonwealth of Kentucky, with a business address of 9990 Monroe Drive, Suite 212, Dallas, Texas 75220-1421.
5. Respondent is a "person" as that term is defined in Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.
6. Respondent is the owner and/or operator of the following Class II underground injection well (Subject Well). This well is a facility as that term is defined in 40 C.F.R. § 144.3:

| <u>EPA ID No.</u> | <u>State Permit No.</u> | <u>Well</u> | <u>County</u> | <u>Status</u> |
|-------------------|-------------------------|----------------|---------------|---------------|
| KYSD650122 | N17727 | Doug Wagner #1 | Estill | Active |

7. The Subject Well is not permitted nor is it rule-authorized.
8. During an inspection on February 7, 2011, EPA inspectors observed produced fluids being injected into the Subject Well through its casing from an oil/water separator.
9. 40 C. F. R. § 144.11 prohibits any underground injection or construction of an underground injection well that is not authorized by rule or by an issued permit.
10. No authorization has been given for the underground injection of fluids into the Subject Well, nor has a permit been issued allowing construction of the Subject Well.
11. Therefore, Respondent is in violation of Part C of the SDWA, 42 U.S.C. § 300j et seq. and 40 C.F.R. § 144.11 for unauthorized construction of an injection well and unauthorized underground injection.
12. On March 17, 2011, Respondent participated in a show cause hearing with EPA representatives to discuss his violations, the SDWA and the implementing regulations.
13. Respondent and Complainant have negotiated a settlement of the foregoing violations and Respondent has agreed to pay a penalty.

STIPULATIONS AND FINDINGS

14. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the facts and findings of violation as alleged herein. Respondent waives any right to a hearing and waives any right to appeal a final order in this matter, and consents to the issuance of a final order without further adjudication.
15. Complainant and Respondent have conferred for the purpose of settlement, pursuant to 40 C.F.R. § 22.18, and desire to resolve this matter and settle the violations described herein without resort to a formal hearing. Therefore, without the taking of any evidence or testimony, the making of an argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

PENALTY AND INJUNCTIVE RELIEF

Based upon the foregoing findings, the parties hereby agree and consent to entry of the following Order:

16. Respondent shall pay a civil penalty of **\$2,513.36 (Two Thousand Five Hundred Thirteen Dollars and Thirty-six Cents)** in accordance with the terms set forth below.

17. Respondent shall submit a cashiers or certified check for each penalty payment.

| | | |
|-----------|----------|--|
| Payment 1 | \$628.34 | Received within 90 days of effective date |
| Payment 2 | \$628.34 | Received within 180 days of effective date |
| Payment 3 | \$628.34 | Received within 270 days of effective date |
| Payment 4 | \$628.34 | Received within 360 days of effective date |

18. The penalty payment as set forth above shall be made payable to the Treasurer, United States of America at the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note the title and docket number of the case on the penalty payment certified or cashiers check.

19. Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

Fred McManus, Chief
Ground Water and SDWA Enforcement Section
U. S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960

20. Pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), failure by Respondent to pay the penalty assessed by this CA/FO in full by its due date may subject Respondent to a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys fees and interest at currently prevailing rates from the date the order is effective). In such an action, the validity, amount and appropriateness of the penalty shall not be subject to review. Additionally, pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA shall assess an administrative fee of \$15 for each subsequent 30 day period. EPA shall assess, on a monthly basis, a 6% per annum penalty on any principal amount not paid within 90 days of the due date.

21. In addition to payment of the penalty described above, Respondent shall perform the following injunctive relief:

- a. Within 60 days of receipt of this Order, Respondent is ordered to submit an administratively complete permit application or properly close, plug and abandon the Doug Wagner #1. Plugging and abandonment must be witnessed by an authorized EPA inspector.

22. Respondent agrees to pay stipulated civil penalties for violation of the condition set forth in Paragraph 21 above as follows:

23. For failure to comply with the condition described in Paragraph 21 above, Respondent shall pay a stipulated civil penalty according to the following schedule:

- a. \$300 for any portion of the first 7 calendar days Respondent is in violation of this Agreement; and
- b. \$200 per day for each day after the first 7 calendar days Respondent is in violation of this Agreement.

24. Stipulated penalties shall become due and payable no later than 30 days after receipt of demand from EPA. Payment shall be in the form of a certified or cashiers check made payable to the Treasurer of the United States of America and sent to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

25. A copy of the check shall be sent to the Ground Water & Safe Drinking Water Act Enforcement Section, Safe Drinking Water Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303-8960. Respondent shall state the docket number of this Order on the face of any such check. The stipulated civil penalties set forth above shall be in addition to any other remedies or sanctions which are or may be available to EPA.

26. The names, addresses and telephone numbers of the individuals authorized to receive service relating to the proceeding are listed below.

For Respondent: Douglas A. Wagner
990 Monroe Drive, Suite 212
Dallas, Texas 75220-1421
214-358-0081

For EPA: Wilda Cobb, Associate Regional Counsel

U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, GA 30303-8960
404-562-9530

GENERAL PROVISIONS

27. The provisions of this CA/FO shall be binding upon Respondent and its officers, directors, agents, servants, employees and successors or assigns. Notice of this CA/FO shall be given to any successors in interest prior to transfer of the ownership or operational control of the facility.

28. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Part C of the SDWA, 42 U.S.C. § 1421 et seq. or any regulations promulgated thereunder. This CA/FO is not, and shall not be interpreted to be, a permit for the injection of fluids under Section 1421 of the SDWA, 42 U.S.C. § 300h, nor shall it in any way relieve Respondent of any obligation imposed by any permit issued there under, or of Respondent's obligation to comply with any provision of the SDWA, its implementing regulations, or any other local, state or federal law. Payment of the penalty agreed to in this CA/FO shall not in any way affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any other violations of law. Full payment of the penalty and performance of the injunctive relief agreed to in this CA/FO resolves only Respondents liability for federal civil penalties for the violations and facts stipulated herein.

29. For the purposes of state and federal income taxation, Respondent shall not be entitled to and agrees not to attempt to claim a deduction for any penalty payment made pursuant to this CA/FO. Any attempt to deduct any such penalty shall constitute a violation of this CA/FO.

30. If any event beyond the control of Respondent, its successors or assigns, occurs which causes or may cause a delay in the achievement of any requirement of this CA/FO, Respondent shall notify EPA orally within 4 days of the time it has knowledge of the occurrence of such event. A written report of said event shall be submitted by certified mail to EPA within 10 days of the date Respondent received knowledge of the event. Said report shall describe the violation or failure, its cause and all attendant circumstances, and the measures taken or to be taken to prevent or minimize any such violation or failure and to comply with the pertinent requirements of this CA/FO as soon as possible, and the timetable by which those measures are proposed to be implemented.

31. The burden of proving that any violation or failure is caused by circumstances beyond the control of and without fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Financial, economic, or business conditions or changes in same, unanticipated or increased costs or expenses, or problems relating to reasonably foreseeable technological infeasibility associated with the implementation of actions called for by this CA/FO, shall not relieve Respondent of any obligation imposed under the terms of this CA/FO, nor from payment of any penalty set forth in this CA/FO. EPA will notify Respondent of its determination that certain circumstances are considered to be beyond Respondent's control and the extension of time, if any, for completion of the affected

requirements. Respondent shall waive this right to any extension for failure to provide EPA with written notice as provided herein or for failure to provide adequate proof for the cause of the delay.

32. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

33. Each party shall bear its own costs and attorneys fees in connection with this action.

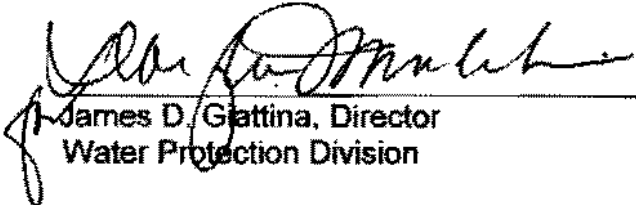
34. This CA/FO shall become effective upon the date that it is filed with the Regional Hearing Clerk.

35. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

RESPONDENT

Date: 9/16/11 
Douglas A. Wagner

COMPLAINANT

Date: 11/15/11 
James D. Giattina, Director
Water Protection Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice and the delegated authority of the Administrator under the SDWA, the above and foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply immediately with the terms of the Consent Agreement, which are fully incorporated into this Final Order.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Nov. 17, 2011

Susan B. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

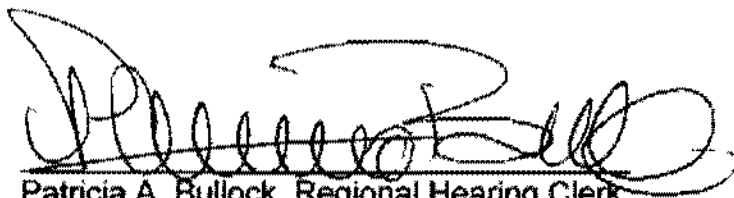
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Douglas A. Wagner, Docket No. SDWA-04-2011-1013(b), on the parties listed below in the manner indicated:

Carol Chen Via EPA Internal Mail

Wilda Cobb Via EPA Internal Mail

Douglas A. Wagner Via Certified Mail/ Return Receipt
9990 Monroe Drive, Suite 212 Requested
Dallas, Texas 75220-1421

Date: 11/17/11



Patricia A. Bullock, Regional Hearing Clerk
United States EPA - Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511